

1991

Uintah Oil Association v. Board of Equalization : Reply Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Harry Souvall; Uintah Couty Attorney; Bill Thomas Peters; Kinghorn, Peters, Styler & Probst; Brian Tarbet; Deputy Utah State Attorney General; attorneys for appellees.

Edward M. Bown; R. Dennis Ickes, Marilyn P. Fineshriber; Nielsen & Senior; attorneys for appellants.

Recommended Citation

Reply Brief, *Uintah Oil Association v. Board of Equalization*, No. 910183.00 (Utah Supreme Court, 1991).
https://digitalcommons.law.byu.edu/byu_sc1/3497

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

DOCUMENT
FILED
5.9
S9
DOCKET NO.

BRIEF

910183

IN THE UTAH SUPREME COURT

UINTAH OIL ASSOCIATION,)	
)	
Petitioner,)	
)	
v.)	
)	
COUNTY BOARD OF EQUALIZATION OF)	Case No.: 910183
UINTAH COUNTY, STATE OF UTAH;)	
UTAH STATE TAX COMMISSION,)	
)	
Respondents.)	Priority 15

PETITIONER'S REPLY BRIEF

PETITION FOR REVIEW OF AN ORDER OF THE UTAH STATE TAX COMMISSION

Harry Souvall, Esq.
Uintah County Attorney
Bill Thomas Peters, Esq.
KINGHORN, PETERS, STYLER & PROBST
Special Deputy Uintah
County Attorney
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111

Brian Tarbet, Esq.
Deputy Utah State Attorney
General
36 South State Street, 11th Floor
Salt Lake City, Utah 84111

Attorneys for Respondents

Edward M. Bown, Esq.
424 East 500 South, Suite 103
Salt Lake City, Utah 84111
Telephone: (801) 355-0942

R. Dennis Ickes, Esq.
Marilynn P. Fineshriber, Esq.
NIELSEN & SENIOR
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 532-1900

Attorneys for Petitioners

FILED

DEC 18 1991

CLERK SUPREME COURT
UTAH

UINTAH OIL ASSOCIATION,

Petitioner,

V.

COUNTY BOARD OF EQUALIZATION OF
UINTAH COUNTY, STATE OF UTAH;
UTAH STATE TAX COMMISSION,

Respondents.

Case No.: 910183

Priority 15

UTAH SHALE LAND & MINERALS
CORP., a Utah corporation,

Petitioner,

V.

COUNTY BOARD OF EQUALIZATION OF
UINTAH COUNTY, STATE OF UTAH;
UTAH STATE TAX COMMISSION,

Respondents.

(Case No.: 910185)

UTAH OIL SHALES, INC., a Utah corporation,

Petitioner,

V.

COUNTY BOARD OF EQUALIZATION OF
 UTAH COUNTY, STATE OF UTAH;
 UTAH STATE TAX COMMISSION,

Respondents.

(Case No.: 910200)

PETITIONER'S REPLY BRIEF

PETITION FOR REVIEW OF AN ORDER OF THE UTAH STATE TAX COMMISSION

Harry Souvall, Esq.
Uintah County Attorney
Bill Thomas Peters, Esq.
KINGHORN, PETERS, STYLER & PROBST
Special Deputy Uintah
County Attorney
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111

Brian Tarbet, Esq.
Deputy Utah State Attorney
General
36 South State Street, 11th Floor
Salt Lake City, Utah 84111

Attorneys for Respondents

Edward M. Bown, Esq.
424 East 500 South, Suite 103
Salt Lake City, Utah 84111
Telephone: (801) 355-0942

R. Dennis Ickes, Esq.
Marilynn P. Fineshriber, Esq.
NIELSEN & SENIOR
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 532-1900

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
SUMMARY OF REPLY	iii
ARGUMENT	1
POINT I THE COUNTY HAS MISSTATED THE APPLICABLE STANDARD OF REVIEW	1
POINT II THE COMMISSION'S REMAND FOR ADDITIONAL EVIDENCE MUST BE SET ASIDE	2
A. <u>The Commission's Decision is Not Entitled to Deference Based Upon Rule 861-1-7A-L</u>	2
B. <u>Even if Entitled to Deference, the Commission's Construction of "Fair Market Value" Should Be Set Aside as Unreasonable.</u>	3
POINT III THE COMMISSION'S ACTION IS BASED ON DETERMINATIONS OF FACTS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.	4
A. <u>Contract Rents.</u>	5
B. <u>Carrying Capacity</u>	6
C. <u>Significant Data Lacking</u>	7
POINT IV THE COMMISSION'S PRESCRIBED PROCEDURES REQUIRE IT TO ACCEPT PETITIONER'S EVIDENCE OF FAIR MARKET VALUE AS TRUE	8
POINT V THE COMMISSION'S FAILURE TO CORRECT THE BOARD'S VALUATION AND ASSESSMENT AND REMAND FOR FURTHER EVIDENCE DENIES PETITIONER DUE PROCESS AND IS UNCONSTITUTIONAL AS APPLIED TO THE SUBJECT PROPERTY.	8
CONCLUSION	9

TABLE OF AUTHORITIES

<u>Crowther v. Nationwide Mutual Insurance Co.,</u> 762 P.2d 1119 (Utah App. 1988)	3
<u>Hurley v. Board of Review of Industrial Commission,</u> 767 P.2d 524 (Utah 1988)	1
<u>IML Freight, Inc. v. Ottosen,</u> 538 P.2d 296, 297 (Utah 1975).	3
<u>Morton International v. Utah State Tax Commission,</u> 163 Utah Adv. Rep. 34, 37 (Utah 1991)	1,2,3
<u>Northwest Land v. State Tax Appeal Bd.,</u> 661 P.2d 44, 45 (Mont. 1983)	6
<u>Xanthos v. Board of Adjustment of Salt Lake City,</u> 685 P.2d 1032 (Utah 1984)	1, 4

SECONDARY AUTHORITIES

Utah Code Ann. § 63-46b-16(4)(g)	4, 7
Utah Code Ann. § 63-46b-16(4)(h)(i)	2
Utah Administrative Code R861-1-7A-L (1987)	2

SUMMARY OF REPLY

In this Reply, Petitioner clarifies the applicable standard of review of the Decision and Order of the State Tax Commission. The evidence cited by the County in its opening Brief regarding market rents and carrying capacity is not the substantial evidence required to support the Commission's determination that Petitioner's appraisal lacks significant data elements and its remand for additional evidence.

The County has not cited contradictory evidence that would excuse the Commission's obligation to accept Petitioner's uncontradicted evidence as true, nor has the County demonstrated that such evidence is inherently improbable. The Commission is required to correct the valuation of the subject property in accordance with the evidence before it.

There is no evidence in the record that additional information regarding value can be obtained. Remand is futile, violating constitutional principles of due process. The arbitrary valuation and assessment is a violation of constitutional principles of taxation and Petitioner is prejudiced by those acts of the Commission. This Court should direct the Commission to correct the valuation of Petitioner's property for assessment and taxation purposes.

ARGUMENT

POINT I

THE COUNTY HAS MISSTATED THE APPLICABLE STANDARD OF REVIEW

The County argues that this Court's decision in Hurley v. Board of Review of Industrial Commission, 767 P.2d 524 (Utah 1988) controls this appeal and that, accordingly, the Commission's decision is to be accorded deference, being set aside only if unreasonable. The County further relies on Xanthos v. Board of Adjustment of Salt Lake City, 685 P.2d 1032 (Utah 1984) to support its claim that an agency is entitled to broad discretion and a presumption that its actions are correct. Instead, because this action commenced after the effective date of the Utah Administrative Procedures Act on January 1, 1988, the standard of review is that set forth in Morton International v. Utah State Tax Commission, 163 Utah Adv. Rep. 34, 37 (Utah 1991).

In Morton International, this court discussed the effect of the Utah Administrative Procedure Act on prior decisions regarding judicial review of administrative agency determinations. Having reviewed its prior decisions, including Hurley, the court stated:

Therefore, in cases dealing with statutory construction, the Utah Administrative Procedure Act does not change the standard of review when the court is in as good a position as the agency to determine the issue [correction-of-error standard] or when the agency has been granted discretion in interpreting the statute [agency's decision will not be disturbed if within the bounds of reasonableness]. However, nothing in the language of Section 63-46b-16 or its legislative

history suggests that an agency's decision is entitled to deference solely on the basis of agency expertise or experience. Indeed, there is no reference to agency expertise or experience in the statute or the statute's legislative history. Rather, in granting judicial relief when an "agency has erroneously interpreted or applied the law," the language of Section 63-46b-16(4) clearly indicates that absent a grant of discretion, a correction-of-error standard is used in reviewing an agency's interpretation or application of the statutory term.

Therefore, to the extent that our cases can be read as granting deference to an agency's decisions based solely on the agency's expertise and not on a statutory delegation of authority, Section 63-46b-16(4)(h)(i) constitutes a break from prior law.

Morton International, 163 Utah Adv. Rep. at 36-37. The determining factor is not the agency's expertise, but whether the legislature has delegated authority to the agency to decide the issue. If discretion is explicit or implied from the statutory language, the agency decision receives deference and is reviewed under a reasonableness standard; absent a grant of discretion, an agency's construction of statutory language is not given deference and is reviewed for correctness. 163 Utah Adv. Rep. at 43, n. 38.

POINT II

THE COMMISSION'S REMAND FOR ADDITIONAL EVIDENCE IS UNREASONABLE

A. The Commission's Decision is Not Entitled to Deference Based Upon Rule 861-1-7A-L.

The County argues that the Commission is entitled to deference based on the grant of discretion to itself by Rule 861-1-7A-L of the Utah Administrative Code. This court has clearly

stated that only the legislature can confer discretion upon an agency. Such deference concerning an agency's statutory construction or application exists only where the legislature has conferred discretion upon the agency by "an explicit or implicit grant of discretion contained in the governing statute." Morton International v. Utah State Tax Commission, 163 Utah Adv. Rep. 34, 37 (Utah 1991). An agency cannot invoke its own rule as a basis upon which it is entitled to deference.

In Crowther v. Nationwide Mutual Insurance Co., 762 P.2d 1119 (Utah App. 1988), the Utah Court of Appeals reviewed a regulation of the Utah State Insurance Department which prohibited stacking of benefits under separate insurance policies. The Insurance Department regulation clearly prohibited stacking although the Utah legislature had not clearly declared policy on that issue. Quoting IML Freight, Inc. v. Ottosen, 538 P.2d 296, 297 (Utah 1975), the court held: "Agency regulations may not 'abridge, enlarge, extend or modify the statute creating the right or imposing the duty.'"

Similarly, unless there has been an explicit or implicit grant of discretion to the State Tax Commission by the legislature, the agency rule which grants discretion cannot be a separate basis of authority.

B. Even if entitled to deference, the Commission's construction of "fair market value" should be set aside as unreasonable.

There is no explicit grant of discretion to the State Tax Commission by the legislature to construe the statutory term

"fair market value," but it is reasonable to conclude that the Commission has the implicit authority to construe the term so long as its construction conforms to the common understanding given the term. Id. at 37.

Nonetheless, the Commission's Decision and Order of March 28, 1991 must be set aside as unreasonable. First, because the Commission rejected Petitioner's adequate and credible evidence of market value when the County offered no evidence whatsoever in support of its appraised value. Second, the Commission remanded the matter for consideration of additional evidence which all parties acknowledge as being unavailable. Third, the Commission failed to consider the relevant factors set forth in the testimony and documentary evidence. This treatment of the Petitioners' evidence and the deference given to the County's lack of contradictory evidence undermines the rationality of the Commission's decision. Thus, the Commission's Decision is unreasonable and should be set aside.

POINT III

THE COMMISSION'S ACTION IS BASED ON DETERMINATIONS OF FACTS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The County asks this Court to defer to the Commission based upon R861-1-7A-L, Utah Administrative Code, and upon a 1984 decision of this court in which the zoning board was presumed to have specialized knowledge in its field. See Xanthos v. Board of Adjustment of Salt Lake City, 685 P.2d 1032 (Utah 1984). However, section 63-46b-16(4)(g) provides that the factual

findings of the Commission receive deference only so long as they are based on substantial evidence. In the absence of that substantial evidence, as in this case, the Petitioner is entitled to relief from the decision and order of the Commission.

The County raises two factual issues which it claims are substantial evidence that Petitioner's appraisal is unreliable. The evidence cited in the County's Brief regarding contract rents and carrying capacity of the land is not sufficient to support the Commission's rejection of Petitioner's appraisal. Neither is there substantial evidence to support the Commission's determination that Petitioner's appraisal lacked significant data.

A. Contract Rents.

The County contends that the taxpayer based the low appraisal value on the low contract rents received by the owner. The County has not cited a single point which supports the Commission's finding that "market rents are significantly higher than \$.96 per AUM." In fact, there is no evidence at all in the record which illustrates how that figure was derived by the Commission. The record only states that the BLM and the Forest Service value an AUM at \$1.81. (T. 22) For that reason, it is impossible for Petitioner to marshal any other evidence in support of that finding of the Commission.

The testimony of Edward M. Bown does not, as the County contends, contradict the Petitioner's appraisal evidence. The

Bown testimony is relevant to the assessment of the property based on its highest and best use. (T. 16) The concept of highest and best use permits the property owner to use prudence and common sense to protect the forage resources and to maximize the property's value over the long term. Mr. Bown testified that, for conservation purposes, the owner did not demand the highest possible rental but opted to promote lighter use of the land. This is consistent with the concept of "best" use.

Most importantly, the fair market value of this land was determined by the taxpayer not by the income method as misconstrued by the County and the Commission but instead the value was determined by the comparable sales approach. In the comparable sales approach, the contract rent under the lease is only relevant insofar as it affects the purchase price the "willing buyer" would pay for property subject to a lease at the contract rate. See Northwest Land v. State Tax Appeal Bd., 661 P.2d 44, 45 (Mont. 1983). Consequently, evidence of contract rents is of limited relevance.

B. Carrying Capacity.

The County contends that the Commission correctly found Petitioner's appraisal unreliable because Petitioner's expert, Steven Wiles, concluded that the BLM and state grazing leases projected that the land could support twice as many animals as the land's actual capacity. Wiles testified that the landowner had not made the use of the grazing capacity of the land as

defined by the BLM because the BLM's attribution of grazing capacity was overstated. (T. 33-34) Further, the area had been in a drought. (T. 29, 36) The County presented no evidence that the BLM figures represent the actual capacity of the land.

C. Significant Data Lacking.

Petitioner presented to the Commission the only credible evidence of fair market value in existence. Nevertheless, the Commission rejected that evidence on the basis that it was subjective and difficult to support with reliable market data. The County argues that the Commission's determination is entitled to deference, based upon its specialized knowledge. This determination of fact by the Commission must, according to Section 63-46b-16(g), be "supported by substantial evidence when viewed in light of the whole record before the court." The County has raised only the minor issues of rents and carrying capacity and cites no other evidence supporting the determination that significant data is lacking from Petitioner's appraisal.

In its responsive Brief, the County argues that Petitioner's appraisal did not conform to generally accepted appraisal practices. Yet, the County cites only to testimony regarding the owner's decision to preserve and protect the land by contracting for use consistent with the condition of the land and for a reasonable rental based on that use. Petitioner presented credible and uncontradicted evidence of market value. The minor points raised by the County do not constitute the substantial

evidence required to support the Commission's determinations that market rents exceed contract rents or that there was insufficient evidence before the Commission to establish the value of the property. Petitioner is, therefore, entitled to relief.

POINT IV

THE COMMISSION'S PRESCRIBED PROCEDURES REQUIRE IT TO
ACCEPT PETITIONER'S EVIDENCE OF FAIR MARKET VALUE AS TRUE

The testimony of Petitioner's decision to promote the highest and best use of the land by contracting for reasonable rent does not contradict Petitioner's evidence of fair market value. As set forth in Petitioner's opening brief, the evidence was that Petitioner's contract rents were comparable to the lease rents on the properties identified as comparable sales. (R. 22; R. 23)

The evidence in Petitioner's appraisal and the testimony of its expert witness were consistent and uncontradicted. Thus, Petitioner met its burden of proof and the Commission was required by its own prescribed procedures to assess the property upon Petitioner's appraised market value.

POINT V

THE COMMISSION'S FAILURE TO CORRECT THE BOARD'S
VALUATION AND ASSESSMENT AND REMAND FOR FURTHER
EVIDENCE DENIES PETITIONER DUE PROCESS
AND IS UNCONSTITUTIONAL AS
APPLIED TO THE SUBJECT PROPERTY

The County dismisses Petitioner's constitutional arguments as hysterical, incredible, bizarre and inflammatory but fails to address the legal issues raised. Petitioner's property was

arbitrarily assigned a value and assessed on that value, a violation of the constitutional requirement that taxation of property be uniform and based on market value. Although Petitioner protested and offered uncontradicted evidence of lesser value, the Commission refused to correct the arbitrary valuation. There is no evidence in the record that additional information regarding value can be obtained on remand, yet the Commission demands that the parties nevertheless produce additional evidence. The remand is futile, violating constitutional principles of due process.

The Decision and Order of the Commission results in prejudice to the Petitioner by delay, additional expense, and the risk of confiscatory rollback taxes.

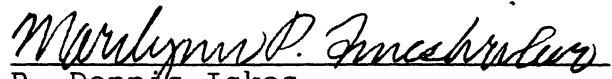
CONCLUSION

For the reasons above and in Petitioner's opening brief, this Court should direct the Commission to correct the valuation of Petitioner's property for assessment and taxation purposes, as requested by Petitioner.

RESPECTFULLY SUBMITTED this 18th day of December, 1991.

for Marilyn P. Bown
Edward M. Bown
Attorney for Petitioners Uintah Oil
Association, Utah Oil Shales, Inc.

NIELSEN & SENIOR



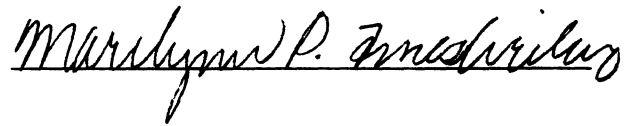
R. Dennis Ickes
Marilynn P. Fineshriber
Attorneys for Petitioner Utah Shale
Land and Minerals Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 1991, I caused four true and correct copies of the foregoing Petitioner's Reply Brief to be hand delivered to the following:

Brian L. Tarbet, Esq.
Deputy Utah State Attorney General
36 South State, #1100
Salt Lake City, UT 84111

Bill Thomas Peters, Esq.
KINGHORN, PETERS, STYLER & PROBST
9 Exchange Place, #400
Salt Lake City, UT 84111



11319.UT004.4